



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

TRUST WATER RIGHT
AMENDED REPORT OF EXAMINATION
Change of Purpose and Place of Use
WRTS File No.: CS4-00626CTCL@2sb7

PRIORITY DATE	COURT CLAIM NO.	PERMIT NO.	CERTIFICATE NO.
May 20, 1885	00626		

NAME OF PARTY CONVEYING RIGHT TO TRUST WATER RIGHTS PROGRAM		
Suncadia LLC		
ADDRESS/STREET	CITY/STATE	ZIP CODE
4244 Bullfrog Road, Suite 1	Cle Elum, Washington	98922-8717

TRUST WATER RIGHT ATTRIBUTES		
SOURCE		
Yakima River		
TRIBUTARY OF (IF SURFACE WATERS)		
Columbia River		
MAXIMUM CUBIC FEET PER SECOND	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE FEET PER YEAR
1.0		392

QUANTITY, TYPE OF USE, PERIOD OF USE

Primary Reach:
1.0 cubic feet per second, 392 acre-feet per year, from April 1 to October 15 instream for water banking purposes

Secondary Reach
125.58 acre-feet per year from April 1 to October 15 instream for water banking purposes distributed monthly as follows:

	April	May	June	July	Aug	Sept.	Oct.	Total
Average Qi (cfs)	0.22	0.33	0.36	0.41	0.38	0.30	0.17	
Qa (acre-feet)	13.06	20.35	21.12	24.96	23.04	18.05	4.99	125.58

HISTORIC POINT OF DIVERSION OR WITHDRAWAL					
APPROXIMATE LOCATION OF HISTORIC DIVERSION					
(Mill Ditch) 300 feet north and 1200 feet east of the center of Section 29, being within the SE¼SW¼NE¼ of Section 29, T. 18 N., R. 18 E.W.M.					
LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION	TOWNSHIP	RANGE [E. or W.] W.M.	WRIA	COUNTY
SE¼SW¼NE¼	29	18 N.	18 E.W.M.	39	Kittitas
PARCEL NUMBER	LATITUDE	LONGITUDE		DATUM	
18-18-29010-0002					

AFFECTED REACHES -- DESCRIPTION OF PLACE OF USE
[See Attachment 1 for map of the trust water right location]

Primary Reach
The primary reach begins at the historic point of diversion on the Yakima River (River Mile 156), that is approximately 300 feet north and 1200 feet east of the center of Section 29, being within the SE¼SW¼NE¼ of Section 29, T. 18 N., R. 18 E.W.M., Kittitas County and ends approximately one mile downstream at River Mile 155.

Secondary Reach
The secondary reach begins approximately at River Mile 155 on the Yakima River at a point located approximately 700 feet west and 125 feet north of the southeast corner of Section 33, being within the SE¼SE¼ of Section 33, T. 18 N., R. 18 E.W.M.

When surplus water is available and not being used for water banking or other authorized purposes, quantities will be added to target flows at Parker Dam and continue onto the confluence with the Columbia River. If the water is used to offset consumptive use by new water users purchasing mitigation credits from Suncadia, the water right will be considered instream at least to Parker Dam in order to offset impacts to total water supply available.

TRUST WATER RIGHT TERM

BEGIN DATE

April 1, 2010

END DATE

Permanent

PROVISIONS

Provisions related to the Trust Water Right

The real property to which the water rights are appurtenant shall remain fallow unless and until another valid water right is transferred to the historic place of use.

The Department of Ecology must manage this trust water right to effectively mitigate for impacts to total water supply available and flow reductions that adversely affect fish. Any portion of this trust water right that is assigned to the 2009 Exchange Contract No. 09XX101700 between the Department of Ecology and the U.S. Bureau of Reclamation will be managed in accordance with that contract and its associated review procedures.

This permanent instream flow trust water right is the result of fallowing of 40 acres of the place of use under Court Claim 00626, to the extent of 1.0 cubic feet per second and 392 acre-feet per year.

FINDINGS OF FACT AND ORDER

Upon reviewing the investigator's report, I find all facts relevant and material to the subject application have been thoroughly investigated. Furthermore, I find the change of water right as recommended will not be detrimental to existing rights or detrimental to the public interest.

Therefore, I ORDER the requested change of place and purpose of use under Trust Water Right Application No. CS4-00626CTCL@2sb7, be approved subject to existing rights and the provisions specified above.

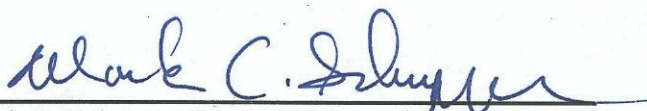
This Decision may be appealed pursuant to RCW 34.05.514(3), RCW 90.03.210(2), and Pretrial Order No. 12 entered in *State of Washington, Department of Ecology v. James Acquavella, et al.*, Yakima County Superior Court No. 77-2-01484-5 (the general adjudication of surface water rights in the Yakima River Basin). The person to whom this Decision is issued, if he or she wishes to file an appeal, must file the notice of appeal with the Yakima County Superior Court **within thirty (30) days of receipt of this Decision**. Appeals must be filed with the Superior Court Clerk's Office, Yakima County Superior Court, 128 North 2nd Street, Yakima WA 98901, RE: Yakima River Adjudication. Appeals must be served in accordance with Pretrial Order No. 12, Section III ("Appeals Procedures"). The content of the notice of appeal must conform to RCW 34.05.546. Specifically, the notice of appeal must include:

- The name and mailing address of the appellant;
- Name and address of the appellant's attorney, if any;
- The name and address of the Department of Ecology;
- The specific application number of the decision being appealed;
- A copy of the decision;
- A brief explanation of Ecology's decision;
- Identification of persons who were parties in any adjudicative proceedings that led to Ecology's decision;
- Facts that demonstrate the appellant is entitled to obtain judicial review;
- The appellant's reasons for believing that relief should be granted; and
- A request for relief, specifying the type and extent of relief requested.

The "parties of record" who must be served with copies of the notice of appeal under RCW 34.05.542(3) are limited to the applicant of the decision subject to appeal, Ecology and the Office of the Attorney General.

All others receiving notice of this Decision, who wish to file an appeal, must file the appeal with the Yakima County Superior Court within **thirty (30) days of the date the Order was mailed**. The appeal must be filed in the same manner as described above.

Signed at Yakima, Washington, this 7th day of April 2011.



Mark C. Schuppe, Section Manager
Water Resources Program
Central Region Office

BACKGROUND

Description and Purpose of Proposed Change

On October 9, 2009, Suncadia LLC of Cle Elum, Washington filed three applications to change the place and purpose of use under Court Claim Nos. 00908 (Lamb), 00626 (Anderson), and 05259 (Anderson) in The State of Washington, Department of Ecology v. James J. Acquavella, et al. (Acquavella). The proposed purpose of use is for water banking to offset the consumptive use associated with new groundwater uses in the Upper Yakima Basin.

This Amended Report of Examination for Change (ROE) addresses the Department of Ecology's (Ecology) conclusions and recommendations related to Application for Change No. CS4-00626CTCL@2sb7. Separate reports will address the specific recommendations and provide conclusions for each Application for Change. Although many elements of the ROE's for the two Suncadia Trust Water Right Change Applications are similar or identical, the evaluation process for authorizing the proposed changes in place and purpose of use are considered individually.

This application qualifies for expedited processing under WAC 173-152-050(3)(a) whereby water right change applications may be processed prior to applications submitted at an earlier date when the proposed water use, if approved, would substantially enhance or protect the quality of the natural environment.

On February 11, 2010, the Department of Ecology (Ecology) issued a Trust Water Right Report of Examination for Change (ROE) modifying the subject right proposed and Court Claim 00626 (Anderson) for instream flows and water banking purposes. On April 13, 2010, Ecology issued a Trust Water Right Report of Examination for Court Claim 00908 (Lamb). On May 13, 2010, Suncadia appealed Ecology's Report of Examination for Court Claim 00908 alleging that "Ecology's determination of the volume available for transfer is inconsistent with the Water Code of this state" (Notice of Appeal, Page 3). Following settlement negotiations and an agreement on modifications to the ROEs for Court Claim No's 00908 (Lamb), 00626 (Anderson) and 05259 (Anderson), Ecology and Suncadia entered a Stipulation and Agreed Order of Dismissal in the case on October 14, 2010. This Amended ROE addresses Ecology's conclusions and recommendations related to the Anderson right, Application for Change No. CS4-000626CTCL@2sb7.

Attributes of Court Claim 00626 (Anderson) and Proposed Change

Table 1
Summary of Existing Attributes and Proposed Changes to Court Claim No. 00626

Attributes	Documented	Proposed
Name	Ronald T. Anderson & Robin L. Anderson	Suncadia LLC
Priority Date Date of Application for Change	May 20, 1885	October 9, 2009
Instantaneous Quantity	1.0 cubic feet per second	1.0 cubic feet per second
Annual Quantity	392 acre-feet per year	392 acre-feet per year
Source	Yakima River	Yakima River
Point of Diversion/Withdrawal	(Mill Ditch) 300 feet north and 1200 feet east of the center of Section 29, being within the SE¼SW¼NE¼ of Sectin 29, T. 18 N., R. 18 E.W.M.	N/A
Purpose of Use	Irrigation	Instream Flow for Water Banking
Period of Use	April 1 through October 15	April 1 through October 15
Place of Use	The NW¼SW¼ of Section 34, T. 18 N., R. 18 E.W.M.	Yakima River (instream)

Legal Requirements for Proposed Change

The following is a list of requirements that must be met prior to authorizing the proposed change in place and purpose of use.

- **Public Notice**
Public Notice was published in the Daily Record on December 9 and 16, 2009. There were no letters of protest filed for this application.
- **State Environmental Policy Act (SEPA)**
Ecology, serving as lead agency for the State Environmental Policy Act process, issued an addendum to the Trendwest Properties: Cle Elum Urban Growth Area Final Impact Statement (FEIS) (2002) and adopted existing environmental documents.
- **Water Resources Statutes and Case Law**
 - RCW 90.03.380(5)(b) states that applications relating to existing surface or ground water rights may be processed and decisions on them rendered independently of processing and rendering decisions on pending applications for new water rights within the same source of supply without regard to the date of filing of the pending applications for new water rights.
 - RCW 90.38.020(1)(a) states that the department (Ecology) may acquire trust water rights by purchase, lease, gift, or other appropriate means other than by condemnation, from any person or entity or combination of persons or entities. Once acquired, such rights are trust water rights. A water right acquired by the state that is expressly conditioned to limit its use to instream purposes shall be administered as a trust water right in compliance with that condition.
 - RCW 90.38.020(3) states that trust water rights may be acquired on a temporary or permanent basis.
 - RCW 90.38.040(1) states that all trust water rights acquired by the department shall be placed in the Yakima River Basin trust water rights program to be managed by the department. The department shall issue a water right certificate in the name of the state of Washington for each trust water right it acquires.
 - RCW 90.38.040(2) states that trust water rights shall retain the same priority date as the water right from which they originated.
 - RCW 90.38.040(3) states that trust water rights may be held by the department for instream flows.
 - RCW 90.42.100(1) states that the department is authorized to use the trust water rights program in the Yakima River basin for water banking purposes.
 - RCW 90.42.100(2)(a) states that water banking may be used to mitigate for any beneficial use under chapter 90.03, 90.44. or 90.54 RCW, consistent with any terms and conditions established by the transferor, except that return flows from water rights authorized in whole or in part for any purpose shall remain available as part of the Yakima basin's total water supply available and to satisfy existing rights for other downstream uses and users.
 - RCW 90.42.100(2)(b) states that water banking may be used to transfer water rights to and from the trust water rights program.
 - WAC 173-152-050(3)(a) An application for change or transfer to an existing water right may be processed prior to competing applications provided the following is satisfied: The change or transfer, if approved, would substantially enhance the quality of the natural environment.

INVESTIGATION

A site visit was conducted by Scott Turner of the Department of Ecology, on February 4, 2010. Aerial photographs from the years 2003, 2004, and 2006 provided information regarding the irrigation water applied to the places of use under each change application, and confirmed the places of use have been fallowed. Additional information and supporting documentation for this investigation was obtained through the following:

- Documentation submitted with the applications and conversations with the applicants attorney, Joe Mentor, Jr.
- Conversations with Ecology staff, Bob Barwin, Darrell Monroe, Dan Haller, and Melissa Downes.
- Washington State Water Code and administrative rules and policies.
- Digitized topographic maps and aerial photographs.
- Yakima County Superior Court Reports of Referee on the Yakima River Basin Water Rights Adjudication for Subbasin No. 7 (Reecer Creek).
- Engineering Reports prepared by Richard Bain, P.E. for Acquavella evidentiary hearings associated with Court Claim Nos. 00626
- Statutory Warranty Deed (as to Water Rights) recorded January 19, 2005.
- Ecology's records.

History of Water Use

The property associated with the water right under Court Claim 00626 is located with the NW¼SW¼ of Section 34, T. 18 N., R. 18 E.W.M. The water has been historically diverted from the Yakima River through the Mill Ditch. Throughout the hearings associated with Subbasin No. 7 in Acquavella, there were some discrepancies about how the rights were to be confirmed. The following timeline describes the modifications to Court Claim No. 00626 during the Acquavella proceedings:

- **Report of Referee** – April 21, 1995, the referee recommended a water right be confirmed under Court Claim 00626 for the Mill Ditch Company, Inc. including all the individual users.
- **Supplemental Report of Referee** – July 6, 1998 – addressed exceptions dealing with confirming rights to the individual land owners instead of a blanket claim under the Mill Ditch Company. The referee recommended a water right be confirmed under Court Claim 00626 for the Anderson's for 1 cfs and 500 acre-feet per year (ac-ft/yr).
- **Second Supplemental Report of Referee** – January 17, 2001 – the referee recommended a water right be confirmed in the amounts of 1.0 cfs and a reduced amount of 392 ac-ft/yr for 40 acres of irrigation.
- **Conditional Final Order** signed October 25, 2001, confirming 1.0 cfs and 392 ac-ft/yr for the irrigation of 40 acres.
- **Order Pendente Lite (OPL)** signed January 13, 2005 – authorizing the temporary change in place and purpose of use to instream flow in the Yakima River. Ecology accepted the donation into the Trust Water Right Program on August 7, 2005.
- **Statutory Warranty Deed (as to Water Rights)** – filed January 19, 2005 conveying interest in the water rights arising under Court Claim 00626 to Suncadia LLC.
- **Mitigation for Temporary Permit No. S4-35229** – July 24, 2009, Ecology approved Temporary Permit No. S4-35229 for up to 2.02 cfs, not exceeding 149.7 acre-feet using a portion of Court Claim Nos. 00626, 00908, and 05259 as mitigation during the 2009 irrigation season. The remainder of the 353.8 acre-feet (204.1) was retained instream in the Yakima River.

Proposed Use

The proposed purpose of use under Change Application Nos. CS4-00626CTCL@2sb7, CS4-05259CTCL@2sb7 and CS4-00908CTCL@3sb7 is to permanently transfer a total of 4.79 cfs and 1,455 ac-ft/yr (418.33 acre-feet consumptive) of water into the TWRP permanently for the purpose of water banking to offset the consumptive use associated with new groundwater uses in the Yakima Basin. The new uses that require mitigation are referred to in the FEIS as "off-site induced development". Trendwest Resort, a predecessor to the Suncadia resort, was required to provide this mitigation as a part of Ecology's March 28, 2003 Amended Modification to Kittitas County Conservancy Board Record of Decision. Transfer of Court Claim No. 00626 constitutes a portion of the equivalent mitigation water relative to Suncadia's mitigation obligations for its water right change applications under Court Claim No. 01724. Ecology and Suncadia will reflect that equivalence within Suncadia's Monitoring and Management Plan by making a one acre-foot upward adjustment to the MPR water supply for each acre-foot of water designated by Suncadia and approved by Ecology through permits or water budget neutral determinations to mitigate for off-site induced development under the parties' Trust Water Right Agreement.

Other Rights Appurtenant to the Place of Use

There are no other water rights appurtenant to the Place of Use of Court Claim 00626.

Trust Water Rights

Water use is characterized as consumptive or non-consumptive. Water use is considered consumptive when it causes diminishment of the source at the point of appropriation, such as crop evapotranspiration and water evaporated during irrigation applications. Water use is non-consumptive when there is no diminishment of the source, such as when leakage from delivery system or application of irrigation water returns to the system as return flow¹.

Water rights accepted into the TWRP must identify the new place of use, normally referred to as the primary and secondary reaches. The primary reach includes water used both consumptively and non-consumptively prior to transfer into the TWRP, while the secondary reach includes only water consumptively used prior to transfer into the TWRP. The primary reach begins at the point where water has historically been diverted and ends at the estimated point where water returns to the river or stream through subsurface and surface flows

¹ Consumptive use calculation details can be found in Ecology Policy POL-1020 Consumptive and Non-consumptive Water Use located at <http://www.ecy.wa.gov/programs/wr/rules/images/pdf/pol1020.pdf>, and Ecology Guidance GUID – 1210 Determining Irrigation Efficiency and Consumptive Use located at <http://www.ecy.wa.gov/programs/wr/rules/images/pdf/guid1210.pdf>.

(commonly referred to as return flows). The secondary reach begins at the point where the return flows historically re-entered the system and continues downstream.

Trust Water Quantities

Water used for irrigation is not constantly diverted over the irrigation period. Water is often diverted at a lower rate during the beginning of the growing season, ramps up during the warmer part of the season and decreases again in the later part of the season. Irrigation may also be interrupted while moving sprinklers, or to dry and harvest the crops.

In the absence of water use records, Ecology uses various methods to estimate the amount of water used and consumed. One source of information frequently used by Ecology is the State of Washington Irrigation Guide (WIG). The WIG provides the estimated average amount of water required by the crop in addition to the existing moisture in the root zone under average climatic conditions. Other methods of estimating evapotranspiration are also available, including a Blaney-Criddle analysis prepared by engineer Thomas Martin specifically for a previous transfer on this right under the *Acquavella* adjudication. Another source of information Ecology used is engineering reports describing historic use associated with the subject claim prepared by Richard Bain, P.E. for Acquavella evidentiary hearing.

The entire water right as authorized would be placed into trust in the primary reach. The primary reach would benefit by 1.0 cfs and 392 acre-feet per year. Seepage losses associated with the subject claim were estimated by Bain for Mill Ditch (60.36 ac-ft, Page 2 of the 2000 Bain Supplemental Report, 5% loss per mile over 3.08 miles). The remaining 331.64 ac-ft reflects historic on-farm use of 40 acres, or about 8.29 ac-ft/ac on-farm water duty. Table 2 illustrates the amount of water that would be placed into trust in the primary reach.

Table 2
Court Claim No. 00626 Estimate of Total Use

	<i>Total</i>
Qi (cfs)	1.0
Qa (acre-feet)	392.0

The secondary reach only includes that portion of the water right that had been consumptively used. The consumptive use (CU) for the secondary reach was determined by the Modified Blaney-Criddle Method² using the analysis provided to the Court by Thomas Martin dated October 19, 2004.³ The crop irrigation requirement (CIR) in the analysis is 32.7 inches per acre. Based on the on-farm water duty of 8.29 ac-ft per acre above, the CIR of 32.7 inches per acre is fully satisfied with an application efficiency of 32.87 % total consumption. In addition to the CIR, a small fraction of water is consumed in the delivery and application of the water. Ecology's guidance on consumptive use, GUID 1210, estimates that for surface application an additional 5% is evaporated, or 37.87% total consumption. Therefore 3.14 ac-ft per acre (37.87 % x 8.29 ac-ft) was consumptively used or a total of 125.58 ac-ft consumed on 40 acres. The calculated CU for Court Claim No. 00626 in monthly instantaneous rates and annual quantities is shown in Table 3.

Table 3
Court Claim No. 00626 Estimated CU in the Secondary Reach

	<i>April</i>	<i>May</i>	<i>June</i>	<i>July</i>	<i>Aug</i>	<i>Sept.</i>	<i>Oct.</i>	Total
Qi (cfs)	0.22	0.33	0.36	0.41	0.38	0.30	0.17	
Qa (acre-feet)	13.06	20.35	21.12	24.96	23.04	18.05	4.99	125.58

CU is the consumptive use portion of the water right. It includes crop evapotranspiration and water evaporated during irrigation application.

Trust Water Management

The consumptive use portion of Court Claim 00626 is proposed to be used as mitigation within the Upper Yakima River Basin (Kittitas County), for Suncadia or third parties to apply for the following:

- New ground water withdrawals
- Surface water diversionary permits
- Water budget neutral determinations

² The Modified Blaney-Criddle Method is described in the Washington State University Research Bulletin Irrigation Requirements for Washington Estimates and Methodology (WSU Research Bulletin No. XB0925, 1984).

³ For purposes of this settlement, Ecology is accepting the Declaration of Thomas H. Martin, Jr., P.E., in Support of Petition Pendente Lite Re: Water Rights Claim No. 00626 (Anderson), filed with the Court on November 22, 2004, as the basis for its analysis of the water right's consumptive use (the "Martin Declaration"). The decision to use the Martin Declaration is in no way precedential.

The details can be viewed in the Draft Trust Water Right Agreement between Suncadia LLC and the Washington State Department of Ecology in Appendix 1.

Impairment Considerations

Exercising the water right described in Court Claim No. 00626 for instream flow purposes would increase river flows from the historic point of diversion downstream at least to Parker Dam. At that point, it would be added to the target flow, but only during times when there is a surplus to that required to offset consumptive use by new water users purchasing mitigation credits from Suncadia.

Ecology reviewed flow targets set by System Operations Advisory Committee (SOAC) to protect the adjudicated instream flow water rights held by the Yakama Nation in association with their treaty fishing rights (which have a priority date of “time immemorial”). Ecology also considered potential impacts to Total Water Supply Available (TWSA) and potential impacts to other existing water rights in the intervening 30-mile reach.

Ecology considered impairment that might result from using the Lamb and Anderson rights to mitigate for new uses within the upriver areas anticipated for induced offsite development. Most new uses are expected to be in the Roslyn and Cle Elum areas.

There are three large diversionary water rights in the intervening reach. They are West Side Irrigating Company (WSIC), Cascade Irrigation District (CID), and Ellensburg Water Company (EWC). During an average water year when the small portions of WSIC’s water rights, which are proratable, are not prorated⁴, the combined diversions for the three districts are listed in Table 4.

Table 4
Combined diversions for the WSIC, CID, and EWC when WSIC is not prorated

<i>Time Period</i>	<i>Combined Qi in cfs</i>
April 1-20	355
April 20-August 31	380
September 1-30	355
October 1-15	247
October 15-31	97

Table 5 below, depicts river flows in both drought (2001 and 2005) and non-drought (2006) years.

Table 5
Average Monthly Yakima River Flows in cfs below the Teanaway River
(Calculated from YUMW and TEAW Stations)

<i>Month</i>	<i>Combined Average Flow</i>		
	<i>2001</i>	<i>2005</i>	<i>2006</i>
April	1214	1512	None
May	1369	1441	1270
June	1990	2765	2072
July	2989	3234	3432
August	2701	2986	3506
September	748	885	962
October	534	463	514

The historic point of diversion for Court Claim No. 00626 is at the headworks of the Mill Ditch. At the historic point of diversion, the proposed mitigation would ensure water budget neutrality relative to TWSA.

During “flip flop,” a project operating mode designed to comply with a 1980 Federal Court Order (the Quackenbush Order), Yakima project operations are significantly altered from normal operations. The river reaches below Keechelus, Kachees, and Cle Elum reservoirs are set to lower flows to improve the survival of spawning Chinook salmon species, incubation of their eggs, and to retain manageable amounts of water in the project reservoirs over the winter. Winter fish targets are designed to maintain flows after September 1 over spawning locations below Easton Lake and Cle Elum Lake dams and extending downstream to the Yakima River’s confluence with the Teanaway River. Further reductions in flow during this time period would adversely impact fisheries.

⁴ Cascade Irrigation District and Ellensburg Water Company do not hold any water rights that are subject to prorationing in the Yakima River Basin Project. A portion of West Side Irrigating Company’s water rights is subject to prorationing. During a drought year the diversion of West Side Irrigating Company associated with its proratable water right is likely to be reduced due to prorationing.

Reclamation and Ecology cooperate in the management of trust water rights acquired for the purposes of instream flow, primarily under chapter 90.38 RCW and the Yakima River Basin Water Enhancement Program⁵. Ecology is primarily responsible for management of the tributary acquisitions and Reclamation is responsible for management of the mainstem diversions and target flows at selected locations. Cooperation between Reclamation and Ecology is required to manage trust water rights created in basin tributaries and on the mainstem. Reclamation manages the Yakima Project to meet its contractual obligations to water users and to meet environmental and fisheries targets identified in federal legislation.

In 2009, Ecology and Reclamation entered into a water exchange contract No. 09XX101700 that allows Ecology to request assignment of trust water rights to the contract. The contract is limited to 1000 acre-feet and has a term of 40 years. If Reclamation accepts assignment of a trust water right, it will hold the water in any empty reservoir space available and then deliver the stored water at a later time to the location(s) Ecology identifies. Ecology anticipates regularly using the contract to store portions of the Lamb and Anderson trust water rights, when reservoir space is available for release to offset impacts to mainstem flows in the Easton to Thorp reach of the Yakima River after the onset of flip-flop. In addition to any statutory public notice required by the water code for new permits, each contract assignment will be subject to the ESA consultation protocols and the notice procedures contained in the contract and its appendices.

Public Interest Considerations

A trust water right may not impair the public interest (RCW 90.42.040(4)). Exercising the requested trust water rights for instream flow will increase flows in the affected reaches from the historic point of diversion and continuing downstream. The Water Resources Act of 1971 (Chapter 90.54 RCW) was enacted to provide strategic means of "providing and securing sufficient water to meet the needs of people, farms and fish". Protecting streamflows in the amounts identified in this report is anticipated to improve fish habitat in the affected reaches.

CONCLUSIONS

In accordance with RCW 90.03.380, the author makes a tentative determination that Court Claim No. 00626 represents a valid right to divert up to 1.0 cfs, 392 ac-ft/yr of water from the Yakima River.

Approval of this water right change request as provisioned below will not enlarge the water right or impair existing water rights.

Permanently transferring water rights to the TWRP for water banking in the Yakima Basin is not detrimental to public interest.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend the request for change to Court Claim 00626 (Anderson Right) be approved in the amounts and within the limitations listed below and subject to the provisions listed in the Report of Examination.

Trust Water Right Attributes

Primary Reach:

1.0 cfs, 392 ac-ft/yr, from April 1 to October 15 for instream flow and water banking purposes.

The primary reach begins at the historic point of diversion (River Mile 156), that is approximately 300 feet north and 1200 feet east of the center of Section 29, being within the SE¼SW¼NE¼ of Section 29, T. 18 N., R. 18 E.W.M., Kittitas County and ends approximately 1 mile downstream at River Mile 155.

Secondary Reach

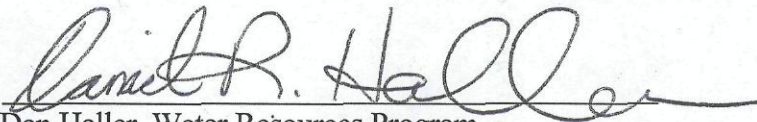
125.58 ac-ft/yr from April 1 to October 15 for instream flow and water banking purposes distributed monthly as follows:

	April	May	June	July	Aug	Sept.	Oct.	Total
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Qa (acre-feet)	13.06	20.35	21.12	24.96	23.04	18.05	4.99	125.58

⁵ Bureau of Reclamation, U.S. Department of the Interior. "Yakima River Basin Water Enhancement Project, Washington, Final Environmental Impact Statement." 1999.

The secondary reach begins approximately at River Mile 155 on the Yakima River at a point located approximately 700 feet west and 125 feet north of the southeast corner of Section 33, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33, T. 18 N., R. 18 E.W.M.

When surplus water is available and not being used for water banking or other authorized purposes, quantities will be added to target flows at Parker Dam and continue downstream to the confluence with the Columbia River. If the water is used to offset consumptive use by new water users purchasing mitigation credits from Suncadia, the water right will be considered instream at least to Parker Dam in order to offset impacts to TWSA.

Report by:  04/07/2011
Dan Haller, Water Resources Program Date

